



DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

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MEMORANDUM FOR DIRECTOR, FIELD OPERATIONS, EAST  
DIRECTOR, FIELD OPERATIONS, WEST  
DIRECTOR, TECHNICAL GUIDANCE

FROM: L. P. Mahler //signed// L. P. Mahler  
Director, Technical Services

SUBJECT: INTERIM GUIDANCE  
TIGTA Report on the Independence of Appeals -  
Recommendations Specific to Fast Track Settlement

At the request of the Chief, Appeals, the Treasury Inspector General for Tax Administration (TIGTA) conducted a review of Appeals' independence, both real and perceived. The purpose of the review was to evaluate whether the Office of Appeals' modernized structure and processes provide the level of independence intended by the IRS Restructuring and Reform Act of 1998 (RRA 98).

In September 2005, TIGTA released the final report. TIGTA concluded: "The overall independence provided by Appeals' structure and processes appears to comply with the intent of the RRA 98." The report can be found on the TIGTA web site:  
[www.treas.gov/tigta/auditreports/2005reports/200510141fr.html](http://www.treas.gov/tigta/auditreports/2005reports/200510141fr.html).

Although this conclusion confirmed our own perceptions, the report is not without recommendations for improvement. The purpose of this memorandum is to address those recommendations specific to the Fast Track Settlement (FTS) program and to provide interim guidance until appropriate sections of the IRM are revised. This interim guidance should be distributed to all Appeals Team Case Leaders (ATCLs), Appeals Officers (AOs) and managers and implemented immediately.

It is the position of the Service that the prohibition of *ex parte* communication does not apply to the FTS program. Two recommendations made by TIGTA regarding the FTS program are that Appeals must ensure taxpayers are informed of their rights and conditions of the FTS program before they make an Application for FTS. TIGTA recommends specifically that Taxpayers be informed before signing the Application for FTS that they are accepting a waiver of the prohibition on *ex parte*.

To fulfill these recommendations, we are revising the FTS program guidelines to clarify the types of communications permissible prior to an opening conference within the FTS program by implementing the following actions:

1. Guidance on *ex parte* communication is being provided in revised publication 4167 that may be viewed at [Introduction to Alternative Dispute Resolution Pub. 4167](#)

LMSB will provide the publication at the opening of the examination and Appeals will provide the publication in the FTS [Acknowledgment Letter \(121205 rev\)](#)

The **Acknowledgment Letter** has been revised to add the following paragraph:

“When the issues are resolved, or a decision is made that a resolution cannot be reached, the case will be closed promptly. If the case is not settled, the taxpayer retains all traditional appeal rights (Pub 1 attached), Appeals will not prepare an Appeals Case Memorandum, and the administrative file will be returned to LMSB without Appeals notes. Let me caution you that written documents that you disclose during the Fast Track process become available to LMSB and may be used in their determination. The prohibition against *ex parte* communications between Appeals Officers and other Service employees provided by section 1001 (a) of the Internal Revenue Service Restructuring and Reform Act of 1998 does not apply to the communications arising in Fast Track Settlement because Appeals personnel, in facilitating an agreement between the taxpayer and LMSB, are not acting in their traditional Appeals settlement role.”

The Appeals Official must also use the Agenda Letter [Agenda Letter \(Rev 11/30\)](#). As a final step, the Appeals Official must document the explanation of taxpayer's rights in the Appeals Centralized Database System (ACDS) Case Activity Record, and retain a copy of the letters.

2. The FTS Application has been revised to include a paragraph about the prohibition of *ex parte* communications. The new Application form must be used in all future Applications for FTS. See [FTS Application](#) (rev Sept 2005).
3. The following Talking Points will be communicated by the Appeals Fast Track Program Manager at the beginning of the FTS process in a ‘welcome’ telephone call with the taxpayer and their representative, and by the FTS Appeals Official at the beginning of the FTS session with the taxpayer, their representative and LMSB Division personnel:
  - In facilitating an agreement between the taxpayer and LMSB, Appeals is not acting in their traditional Appeals settlement role.
  - The Fast Track Settlement process is considered to have begun once all parties have signed the Application to enter into the process.
  - The Fast Track Settlement process occurs in LMSB jurisdiction, and if the Fast Track Settlement process is unsuccessful, information that is disclosed by the taxpayer may be used by Compliance to complete the examination report.

- The prohibition of *ex parte* communications between Appeals Officers and other Internal Revenue Service employees does not apply to the communications arising in the Fast Track Settlement process, because the Appeals personnel are not acting in their traditional Appeals' settlement role.
- The Fast Track Settlement Appeals Official plans to hold individual sessions with both the taxpayer and Compliance that will involve *ex parte* communications.
- If the Fast Track Settlement process is unsuccessful, the taxpayer retains the traditional appeal rights and upon the taxpayer filing a protest in response to a 30-day letter, their case goes to traditional Appeals.”

These procedures will be incorporated into IRM 4.51.4 and 8.2.1.2.3 within one year from the date of this memorandum. If you have any questions concerning this guidance, please call me or J. W. Wyatt at 314-612-4639.

cc: Director, Performance, Quality and  
Audit Assistance, LMSB  
cc: Director, Examination, SB/SE